

GEORGE SILVA (019596)  
ELIZABETH ORTIZ (012838)  
KIMBERLY W. MACEACHERN (011331)  
ARIZONA PROSECUTING ATTORNEY'S ADVISORY COUNCIL  
1951 W. CAMELBACK RD. SUITE 202  
PHOENIX, ARIZONA 85015  
TELEPHONE: (602) 542-7222

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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IN THE MATTER OF:

PETITION TO AMEND ARIZONA 12.9(b),  
Ariz.R.Crim.P.

R-12-0015

ARIZONA PROSECUTING ATTORNEYS'  
ADVISORY COUNCIL'S COMMENTS TO  
PETITION TO AMEND ARIZONA 12.9(B),  
ARIZ.R.CRIM.P.

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") hereby submits  
comments to the Petition to Amend the 12.9(b), Arizona Rules of Criminal Procedure.

Respectfully submitted this XX<sup>th</sup> day of May, 2012,

GEORGE SILVA, Santa Cruz County Attorney,  
Chair, APAAC Rules Committee

ELIZABETH ORTIZ, APAAC  
Executive Director

BY: \_\_\_\_\_  
Kimberly W. MacEachern  
APAAC Staff Attorney

## **I. Preface**

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) hereby submits its qualified support of R12-0015; Petition to Amend the E.R. 3.8, Rule 42 Supreme Court Rules. APAAC, a statutory council, is populated by representatives of the various criminal prosecution offices at every level of Arizona government: state, county and municipal. The content of this comment is a consensus of the member organizations. As such it may not include all the observations or concerns that may be held by any single member. Nevertheless, this comprehensive comment should be imputed the weight of the general prosecuting community which is tasked with promoting justice while ensuring public safety throughout Arizona.

## **II. General Observations Regarding the Proposed Rule**

The Petition seeks to add a deadline for filing a motion for a new finding of probable cause following an appellate remand of a case for a new trial. The reasoning is that a change in the justification statute made retroactive pending trial should be entitled to redetermination of probable cause.

APAAC submits that application of the rule should be limited to only those cases that were reversed because a substantive change in the law makes it apply to the defendant in question. Because this rule is purely procedural, this qualification would ensure that the rule is not applied to cases where an appellate ruling does not affect a previous probable cause finding.

## **III. Conclusion**

APAAC supports the Petition if, and only if, language is added to limit it in a manner consistent with this comment.

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Respectfully submitted this XX<sup>th</sup> day of May, 2012.

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